



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 18-63, 17-105; FCC 19-17]

Streamlined Reauthorization Procedures for Assigned or Transferred Television Satellite Stations; Modernization of Media Regulation Initiative

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts streamlined procedures for reauthorizing television satellite stations when they are assigned or transferred. This document continues the Commission's efforts to modernize its regulations and reduce unnecessary requirements that can impede competition and innovation in the media marketplace.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Julie Salovaara, Industry Analysis Division, Media Bureau, FCC, at Julie.Salovaara@fcc.gov or (202) 418-2330.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 19-17, in MB Docket Nos. 18-63, 17-105, adopted on March 11, 2019, and released on March 12, 2019. The complete text of this document is available electronically via the search function on the FCC's Electronic Document Management System (EDOCS) web page at https://apps.fcc.gov/edocs_public/. The document is also available for public inspection and copying during regular business hours in the FCC Reference Information Center, 445 12th

Street, SW, Room CY-A257, Washington, DC 20554. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

Synopsis

1. *Introduction:* In this Report and Order, the Commission adopts streamlined procedures for reauthorizing television satellite stations when such stations are assigned or transferred. The revised process will reduce the costs and burdens currently associated with transferring existing satellite stations. In a notice of proposed rulemaking (NPRM), 83 FR 15531 (April 11, 2018), the Commission proposed to streamline this reauthorization process in order to eliminate potentially needless regulatory expense and delay. In response, commenters unanimously agree that the reauthorization process is unnecessarily costly and burdensome for both the station owner and the Commission. The Commission's action to streamline this process stems from its initiative to modernize its media regulations, and it furthers those efforts by reducing unnecessary requirements that can impede competition and innovation in the media marketplace.

2. *Background:* Television satellite stations are full-power terrestrial broadcast stations authorized under part 73 of the Commission's rules. They generally retransmit some or all of the programming of another full-power television station, known as the parent station, which typically is commonly owned or operated with the satellite station. The Commission authorized television satellite stations initially in sparsely populated areas with insufficient economic bases to support full-service stations and then later in larger markets when a proposed satellite could not viably operate as a full-service station. Television satellite stations are

excepted from the Commission's multiple ownership limits, most significantly the Local Television Ownership Rule. The ownership exception is set forth in Note 5 of 47 CFR 73.3555. In order for the exception to apply, a television station must obtain authorization from the Commission to operate as a satellite. If a licensee of a satellite station seeks to assign or transfer the license to a new owner that wishes to continue operating the station as a satellite, the Commission's current procedures require the applicants to the transaction to make the same showing that is required for initial satellite authorization. This showing is required in response to a question concerning compliance with the Commission's multiple ownership rules at Application for Consent to Assignment of Broadcast Station Construction Permit or License, FCC Form 314, Section III, Question 6.b., and at Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, FCC Form 315, Section IV, Question 8.b.

3. In 1991, the Commission revised the standards for television stations seeking to obtain satellite status and adopted a rebuttable presumption that stations would qualify for satellite status if: (1) there was no "City Grade" contour overlap between the parent and the satellite station; (2) the satellite station served an underserved area; and (3) no alternative operator was ready and able to construct or to purchase and operate the satellite station as a full-service station. The Commission established detailed evidentiary standards for meeting the second and third criteria. If an applicant did not qualify for the presumption, the Commission evaluated the proposal on an ad hoc basis and granted the application if there were compelling circumstances warranting approval. The Commission stipulated that owners of authorized satellite stations seeking to assign or transfer the station were required to demonstrate that the

conditions under which the station had been accorded satellite status continued to exist at the time of the assignment or transfer.

4. The transition to digital television service in 2009 rendered ineffectual the first prong of the Commission's presumptive standard as there is no precise digital counterpart to a station's analog City Grade contour. Accordingly, in its 2010/2014 media ownership review, the Commission clarified that, consistent with case law developed after the transition, it would evaluate all requests for new and continued satellite status on an ad hoc basis. As a practical matter, the second and third prongs of the Commission's presumptive standard continued to serve as guidelines under the ad hoc review. This shift in approach did not change the burden of proof for applicants seeking either an initial satellite station authorization or the continuation of existing satellite status in the transfer or assignment context.

5. In May 2017, the Commission launched an initiative to review its media regulations and eliminate or modify rules that are outdated, unnecessary, or unduly burdensome. That review prompted the suggestion from broadcasters that the Commission streamline the process for demonstrating the continued eligibility of a television satellite station in connection with an assignment or transfer of such a station. Based on those suggestions, the Commission proposed to revise the steps required for reauthorization of satellite status in the context of assignments and transfers and sought comment on all aspects of its proposal. Several broadcasters filed supporting comments, in which they assert that a streamlined process would reduce unnecessary costs and burdens for broadcasters, conserve Commission resources, and benefit consumers in underserved areas by encouraging investment in satellite stations. Although the Commission contemplated limiting its proposal to satellite stations sold in combination with their previously approved parent stations, commenters argue that any revised

procedures also should apply when the assignment or transfer results in the satellite station combining with a different parent station. No comments were filed opposing the Commission's proposal to streamline the reauthorization process.

6. *Discussion:* We adopt streamlined procedures for reauthorizing satellite status when the license of a television satellite station is assigned or transferred. Specifically, we allow the applicants to the transaction to use streamlined procedures in those situations where there has been no material change in the circumstances that warranted the grant of a station's existing authorization and upon submission of a complete copy of the most recent written Commission decision granting the satellite exception. For reasons explained below, we allow the applicants to use these streamlined procedures regardless of whether the satellite station that is the subject of the assignment or transfer application maintains the same parent station or becomes associated with a different parent station.

7. This streamlined process will avoid the unnecessary expenditure of resources by both applicants and the Commission in situations where the facts and circumstances surrounding the station have not changed materially. The record demonstrates that the evidentiary showings currently required in connection with satellite station reauthorization often involve time and expense for both applicants and Commission staff. Commenters attest that it can cost several thousand dollars and many man-hours to prepare a reauthorization request, which typically can involve the services of lawyers, economists, engineers, and/or brokers. We conclude that these regulatory burdens are unwarranted in the absence of material change. Indeed, the Commission has no record of having ever denied a reauthorization request. We note further that declining populations in many rural areas make it likely that most satellite stations will continue to meet the reauthorization criteria. The revisions we adopt will reduce the burden on applicants but at

the same time will not alter or limit the public's opportunity to object to a reauthorization request, as the procedures for doing so will remain unchanged.

8. Notably, no commenter has presented any argument or evidence suggesting that our action will harm the public interest or contravene any Commission policy goals. To the contrary, the record enumerates several likely public interest benefits that should produce a positive outcome for broadcasters, consumers, and the Commission. The cost-savings to broadcasters will reduce their regulatory expenses and allow them to invest their resources more productively. In addition, easing the transfer of satellite stations, and thereby promoting their viability, will benefit consumers in remote and underserved areas who are beyond the reach of the parent station's signal. Finally, a streamlined review process will enable the Commission to allocate its own resources more efficiently.

9. As proposed in the NPRM, we permit applicants to a transaction involving a satellite station to avail themselves of our streamlined reauthorization procedures if they satisfy two conditions. First, the assignment or transfer application must include a certification by both parties to the transaction that the underlying circumstances upon which the Commission relied in granting the current satellite authorization have not changed materially since the issuance of the most recent satellite authorization. Second, the assignment or transfer application must include a complete copy of the most recent written Commission decision (e.g., Letter Order) granting the satellite exception. If the applicants cannot meet one of these conditions because there has been a material change in circumstances or because they cannot locate the Commission's most recent written decision, then the streamlined procedures will not apply, and the applicants may apply for reauthorization in the same way as before with evidentiary showings that meet our ad hoc review criteria. If the Commission has issued a written satellite decision but the decision

does not specify the facts and circumstances surrounding the grant or does not provide sufficient information from which to discern the Commission's basis for the grant, then the applicants should submit a standard reauthorization request instead of a streamlined request. The applicants may not avail themselves of the new streamlined procedures if the Commission did not identify in sufficient detail the facts and circumstances upon which it relied in approving the existing satellite exception because the constancy of those facts and circumstances would not be able to be certified or verified.

10. Procedurally, applicants may submit the required materials—both their certification and copy of the Commission's most recent written decision granting the previous satellite exception—as an exhibit to the relevant Commission form and in particular the question on the form that pertains to compliance with the Commission's multiple ownership rules (i.e., Application for Consent to Assignment of Broadcast Station Construction Permit or License, FCC Form 314, Section III, Question 6.b., or Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, FCC Form 315, Section IV, Question 8.b.) The certification, for which both parties will be accountable, may entail a general statement that there has been no material change in the underlying circumstances upon which the Commission relied in granting the satellite station's most recent satellite exception. We do not require applicants to attest to a set of more specific facts as the certification, by its very terms, encapsulates the facts and circumstances existing at the time of the prior grant of the satellite exception and avows that those facts remain true at the time of assignment or transfer. We emphasize, however, that materiality certifications should be informed by the specific factors relied upon by the applicants and the Commission in the prior grant. In addition, applicants are welcome to add any explanatory details they consider helpful.

11. Furthermore, we decline to restrict the term “material change” to specific, pre-defined situations. In particular, we reject the suggestion that the Commission consider all changes to be non-material except when: (1) a satellite station seeks to modify its facilities voluntarily such that its service contour would exceed 20 percent of the prior overlap with the parent station; (2) the seller has received a bona fide offer within the preceding three years to purchase and operate the satellite as a standalone station; or (3) information submitted to support an alternative showing has changed fundamentally. We fear such an approach might not be appropriate for all reauthorization requests. We believe that the circumstances of each case should guide the determination of whether there has been a material change in the underlying circumstances upon which the Commission originally granted the existing satellite authorization.

12. We conclude that requiring applicants to certify that no material changes have occurred and to attach the Commission’s most recent written satellite authorization will provide sufficient information to allow Commission staff to determine if continued satellite status is appropriate and to enable interested parties to decide whether to object to a reauthorization request. Commission staff can ask the applicants to provide additional information if needed to reach a finding. As we explained in the NPRM, objections may be filed as part of the existing petition to deny and informal comment process applicable to all proposed license assignments and transfers of control. The applicants will have the opportunity to respond to an objection within the normal pleading cycle, and the Commission then will have a record upon which to make a determination. If an objection is filed, the Commission or its staff will issue a written reauthorization decision explaining its reasoning. Absent an objection, and if the Commission approves the transaction simply by issuing an FCC Form 732 rather than by rendering a letter decision, the Commission will not issue a separate written ruling addressing the reauthorization

request. In those cases, we will follow commenters' suggestion to memorialize the reauthorization decision in the "Special Conditions" section of the FCC Form 732 approving the transaction. We will include a brief statement that the reauthorization grant is based upon both parties' certification and may add any necessary or helpful explanatory details, such as a cross-reference to the prior grant of the satellite exception upon which the applicants rely. When satellite stations that have been reauthorized in this manner are assigned or transferred in the future, the applicants to those transactions should attach the most recent written decision the Commission or staff issued that specifies the operative facts and circumstances that provided the basis for approval of satellite status. The applicants also should provide the dates of any intervening Commission reauthorizations memorialized on FCC Form 732 approvals, but the FCC Form 732 itself shall not constitute a decision upon which an applicant may rely in requesting streamlined reauthorization. If there has been no material change in the underlying circumstances supporting the Commission's or staff's most recent written decision, then that decision remains relevant and useful even if it also was used to support previous reauthorizations and may be many years old.

13. We adopt these streamlined procedures regardless of whether the identity of the parent station changes as a result of the transaction. In the NPRM, we sought comment on whether we should restrict any new streamlined reauthorization procedures to those transactions that involve the assignment or transfer of control of a satellite station in combination with its previously approved parent station. Commenters contend that our proposed streamlined procedures also should apply when the satellite station combines with a different parent station as a result of the transaction. They assert that the Commission determines satellite designations based on the conditions and characteristics related to the satellite station, not the parent station,

and so the identity of the parent station should not affect the reauthorization decision. The Commission never has denied a satellite reauthorization request when the underlying transaction resulted in a different parent station, and interested parties would be able to raise any concerns about a proposed new combination. Our ad hoc review of reauthorization requests is guided by considerations of whether the satellite station serves an underserved area and whether it could survive as a standalone station. Because a reauthorization review focuses on the health and viability of the satellite station and provides ample opportunity for public comment, we agree with commenters that our streamlined procedures should apply regardless of whether the parent station changes or stays the same post-transaction.

14. We conclude that this action to streamline the reauthorization process for television satellite stations will benefit broadcasters, consumers, and the Commission. Further, removing unnecessary constraints on the transferability of satellite stations is consistent with our efforts to modernize our regulations.

Procedural Matters

15. *Final Regulatory Flexibility Act Certification.* The Regulatory Flexibility Act of 1980, 5 U.S.C. 604, as amended (RFA), requires that a final regulatory flexibility analysis be prepared for notice and comment rulemaking proceedings, unless the agency certifies that “the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.” See 5 U.S.C. 605(b). The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” See 5 U.S.C. 601(6). In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. See 5 U.S.C. 601(3). A “small business concern” is one which: (1) is independently owned and operated;

(2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

16. In this Report and Order, the Commission adopts streamlined procedures for reauthorizing television satellite stations when they are assigned or transferred. The revisions stem from an initiative the Commission launched in May 2017 to modernize its media regulations. Commenters in the proceeding assert that the Commission should streamline the process for demonstrating that a television satellite station remains eligible for satellite status in connection with an assignment or transfer of the station because, they contend, the current process is lengthy, costly, unnecessary, and serves no rational purpose. Indeed, the time and expense of filing satellite reauthorization requests may discourage potential purchasers of satellite stations, which typically are in rural and economically depressed areas and often in need of investment. The revised procedures are intended to reduce unnecessary regulation and regulatory burdens that can impede competition and innovation in the media marketplace.

17. Specifically, if there has been no material change in the underlying circumstances since the Commission granted the current satellite authorization, the parties to the proposed transaction can certify to that fact instead of having to make the same type of showing required for the station's initial satellite authorization. In addition, a complete copy of the written Commission decision granting the current satellite exception must be provided with the assignment or transfer application.

18. As transactions involving television satellite stations usually comprise a very small percentage of the total number of television transactions processed by the Commission and originate from a similarly small segment of the overall industry, the number of small entities impacted will not be substantial for RFA purposes. Therefore, the Commission certifies that the

rule changes adopted in this Report and Order will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the Report and Order, including a copy of this Final Regulatory Flexibility Act Certification, to the Chief Counsel for Advocacy of the SBA. This final certification also will be published in the Federal Register. See 5 U.S.C. 605(b).

19. *Paperwork Reduction Act.* The Office of Management and Budget (OMB) approved non-substantive changes for the information collection requirements contained in this rulemaking on March 28, 2019 under OMB control number 3060-0031. See Paperwork Reduction Act of 1995, Pub. L. 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Pub. L. 107-198, we previously sought specific comment on how we might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” See 44 U.S.C. 3506(c)(4).

20. *Congressional Review Act.* The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act. See 5 U.S.C. 801(a)(1)(A).

21. *Ordering Clauses:* Accordingly, IT IS ORDERED that, pursuant to the authority found in sections 1, 4(i), 4(j), 303(r), 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 303(r), 309, and 310, this Report and Order IS ADOPTED.

22. IT IS FURTHER ORDERED that this Report and Order, including the revisions to title 47 of the Code of Federal Regulations shown below, SHALL BE EFFECTIVE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER, which shall be preceded by OMB approval of the modified information collection requirements adopted herein.

23. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Act Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

24. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

25. IT IS FURTHER ORDERED that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 18-63 shall be TERMINATED and its docket closed.

List of Subjects 47 CFR Part 73

Radio, Reporting and recordkeeping requirements, Television.

Federal Communications Commission.

Katura Jackson,
Federal Register Liaison Officer,
Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

§ 73.3555 [Amended]

2. Amend § 73.3555 in Note 5 by adding the phrase “as further explained by the Report and Order in MB Docket No. 18-63, FCC 19-17, (released March 12, 2019),” after the phrase “(released July 8, 1991),”.

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